

# Georgia's Trade Diplomacy: the Georgian-Russian Talks on the Accession of the Russian Federation to the World Trade Organisation – Victory or Defeat?

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## Abstract

The article sheds the light on the Georgian-Russian long negotiations at the Russia's bid to join WTO. The paper discloses details and strategies of bilateral trade diplomacy, offers more in depth analyses and better understanding of reasons and circumstances which led to the long negotiations cycle and time-to-time breaking of entire Russia's WTO accession process. It is shown that the crisis in relations between Tbilisi and Moscow in most cases was politically motivated and often negatively affected the trade talks. The author tries to respond to speculations about Georgia's "troublemaking" at the WTO deliberations, which was caused by the lack of information and understanding of the background the Georgia-Russia standoff and diplomatic strategies and tools practiced by the both countries. The current work at the certain degree fills the gap in knowledge of "big country–small country" trade dispute resolution, explores better understanding of negotiations process and its peculiarities as well as outcome of 11 years of start-stop talks. The research concentrates on long pending customs checkpoint issues as well as "costs and benefits" questions and concludes that the signed Agreement on customs administration and monitoring of trade across the contested borders and the enforcement process did not meet Tbilisi's high expectations in five years time since its conclusion.

**Keywords:** Accession Process, Bilateral Agreement, Diplomacy, Georgia, Russia, Trade Negotiations, WTO

## Introduction

We truly believe that Russian-Georgian relationship in general and bilaterally trade in particular, which had its ups and downs over the last two and a half decades of independence, needs more in depth study and better understanding of reasons and circumstances which led to the long negotiations cycle and time-to-time breaking of entire Russia's WTO accession process. The crisis in relations between Tbilisi and Moscow became quite indicative, in part, of mixed, some-time politically motivated and conflicting approaches of the parties. There were plenty of speculations about Georgia's "troublemaking" at the WTO talks, which was caused from the lack of information and understanding of background of the Georgia-Russia standoff and diplomatic strategies and tools practiced by the both countries. We believe that the current work will make its modest contribution into filling the gap in knowledge and better understanding of negotiations process and its peculiarities as well as outcome of 11 years of marathon talks. We hope that the article will cause wide interest within the academic circle, political establishment and broader international society.

This work is based on analyses of the firsthand information, personal archives, talking notes and interviews gathered during two decades of my Foreign Service as well as available and reliable literature and media sources. In addition, there are some critical questions to which we tried to find responses; in particular: How the Georgian-Russian political relationship dominated the negotiations dynamic over a decade of the WTO accession process? What was Georgia's diplomatic strategy at the accession negotiations? What was a role of political elites of Georgia in the decision making and

influencing trade negotiations with Russia? What issues defined negotiations agenda during WTO accession talks? How Georgia, as a small and vulnerable economy confronted a global trade actor – Russia? How Georgia-Russia stand-off affected entire process of Russia's accession negotiations? What are costs and benefits for each party of the Russia-Georgia agreement paving the way for Russia's WTO membership?

## The Initial Stage of Negotiations (2000-2002)

As soon as Georgia became a WTO member (the 137th, 14 June, 2000), the Georgian government applied to WTO for membership of the Working Party (WP) on Russia's accession to WTO. In early September 2000, the Georgian Mission in Geneva received a reply from the WTO secretariat informing Tbilisi over inclusion of Georgia into the list of WP member-countries. By September 2000 already 54 countries took part in the work of the WP, although in bilateral talks were engaged only 43 countries, including Georgia.

## Decision making

In October 2000 inter-ministerial Ad Hoc group was established in Tbilisi under Deputy Foreign Minister Ms. Tamar Beruchashvili leadership, aiming at coordination of interagency work and elab-

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oration of Georgian position on WTO accession talks with Russia and other CIS countries (by the beginning of 2001 Georgia was already engaged in accession negotiations with Armenia, Azerbaijan, Moldova, Kazakhstan, Tajikistan and Ukraine). Besides special communication system was built up between the Permanent Mission in Geneva, the Ministry of Foreign Affairs, the National Security Council and the administration of the President. The Permanent Representative to the UN Office and Other International Organizations at Geneva, Ambassador Kavadze was appointed chief negotiator on Russia's and other CIS countries WTO accession negotiations. The state of affairs of Georgia's participation in talks with Russia was regularly reviewed and negotiations strategy was updated and approved by the National Security Council chaired by President Shevardnadze.

### *The Role of the Georgian Permanent Representation in Geneva*

Diplomatic representations accredited to international organizations located in Geneva significantly vary with a number of diplomatic staff and technical expertise accumulated during decades long close collaboration with specialized international institutions. In this light we have to consider huge differences in institutional and administrative capacity of diplomatic missions of Georgia and Russia. The Russian permanent representation with a great number of diplomatic personnel (nearly a hundred of diplomats) working in different fields of multilateral diplomacy (international security and disarmament, trade and economic policy issues, cooperation in field of science and technology, health and environment protection, human rights and humanitarian issues etc.) is one of the biggest diplomatic missions in Geneva which during WTO talks was supported by a great army of technical personnel commissioned from Moscow to support accession process on the ground. However, the Georgian mission, which was set up in July 1997, with a few diplomats on board (5 diplomats in total), well learnt how to make best use of limited capacity for dealing with sometime very technical issues and conducting negotiations on specific provisions of trade or other agreements. During and after Georgia's WTO accession the Georgian Mission gained a vast experience with dealing numerous WTO issues, and particularly studied a lot from Georgia's and other countries accession processes. Furthermore, since establishment of the Georgian diplomatic representation in Geneva, the Georgian relevant diplomats were attending numerous WTO accession working party meetings including the Russian ones, as observers, certainly. That is why it was not surprising that the Georgian representation was given a free hand from the Government for generating initiatives and active engagement in the negotiation process. Nearly all suggestions and drafted proposals were coming out from Geneva, then processed by the Department of International Economic Relations of the Ministry of Foreign Affairs (the special WTO unit was set up within the department) and circulated among all concerned governmental institutions, to ensure that the views of all relevant ministries are fed into negotiations, and then amended and endorsed drafts were sent back on the same way to the Permanent Mission in Geneva.

### *Strategy for Negotiations*

Usually small and vulnerable economies have a little leverage in market access negotiations and potential for gains, Georgia was able to obtain through this type of strategy, was very small. Moreover, since Georgia's independence, the Russian-Georgian relations were very tense and complex, overshadowed by Russia's support of aggressive separatism which resulted in a loss of control over Georgian provinces of Abkhazia and South Ossetia, manipulation with energy resources, trade restrictions and import bans, unwillingness to remove military bases from the neighbouring country, interference in the domestic political affairs and lastly Russia's resurgent imperial ambitions for keeping Georgia within sphere of its interests, represented a real threat to the national

interests of Georgia. Despite all odds, in these circumstances, Russia's WTO accession talks were a promising playground for Georgia: if Tbilisi together with other partner countries could manage to disclose Russia's WTO inconsistencies, violation of undertaken international commitments, introduction of discriminative and unjustified measures against trade partners, real outcome of economic reforms under the WTO conditionality requirements, Russia could be transformed into a more accountable to international norms and a reliable state and a partner-country. Furthermore, for Georgia these diplomatic negotiations could serve the purpose of foreign policy objectives of the country: if Tbilisi succeeded in the talks, it would be used as bargaining chips in future Georgia-Russia negotiations on a broader bilateral agenda. These considerations set up a logical framework for the Georgian team who was set to start negotiations.

### *General Overview of the WTO Accession Process*

According to the WTO practice, accession process involves two different sets of negotiations that usually run in parallel. The first set of negotiations is conducted on a multilateral basis between the applicant country and WTO members in an ad hoc Working Party (WP) meeting. Through these negotiations, the economic and trading systems as well as measures affecting trade of the applicant country are reviewed and an "accession protocol – working party report" is drafted by the WP and adopted by the General Council describing the acceding conditions and commitments undertaken by an applicant country. The other set of negotiations is usually referred to as "market access negotiations" and conducted bilaterally between acceding and WTO member countries who wish to negotiate a tariff reduction deal, as well as elimination of non-tariff barriers, and commitments in services, so as to improve access to the applicant's markets. The negotiations are conducted to adjust a balance between the rights and obligations of the WTO members who have reduced their tariffs and eliminated barriers to trade through negotiations in the past and newly acceding members who have not done so. The concluded bilateral accords are applied to all members under the principle of MFN treatment and it is a prerequisite for completion of multilateral talks and final approval of membership by the Ministerial Conference (Kavadze, Ukleba, & Katamadze, 2003).

### *Early Discussions*

On 3 November, 2000 at the WTO headquarters – the Center William Rappard – was held the first bilateral meeting with the Russian delegation. During the bilateral talks, the Russian Federation was represented by director of department of customs regulations of the Ministry of Economic Development and Trade Mr. Andrey Kushnirenko (who acted as a deputy chief negotiator); during multilateral negotiations the Russian delegation was led by Deputy Minister of Economic Development and Trade Mr. Maxim Medvedkov. The Georgian delegation was led by Ambassador Amiran Kavadze and composed of Senior Counsellor of the Permanent Representation Mr. Valerian Katamadze.

The first meeting was mainly devoted to the general overview of Georgian inquiries on Russia's participation in the CIS customs union, the Eurasian Economic Union and coordination of member countries during their accession negotiations. The Russian delegation clarified that still there is no a clear accession strategy of CIS Customs Union and the Eurasian Customs Union member countries: Kazakhstan and Tajikistan did not have any vision how to join the WTO – with coordination or separately, moreover Belarus is quite far away from WTO requirements and in Geneva there is quite enough skepticism over Minsk's future accession aspirations. Another issue, which was raised by the Georgian delegation, was an exemptions list from the bilateral trade agreement signed on February 3, 1994. We proposed to remove sugar and ethyl spirits from the commodity list included in the protocol of exemptions. It was further commented that if the Russian Federation is not in a position to meet this request, then Georgia will be forced to get involved in

bilateral market access negotiations and will formally ask to make significant tariff reduction in the scheduled initial tariff concessions submitted by Russia to the WTO. Then the Georgian delegation addressed to a number of issues such as a ban of ethyl alcohol, illicit trade and smuggling at the Russian-Georgian state border, Russia's preferential trade with breakaway regions, etc. As it became clear from the outset, the Russian delegation was not ready to discuss thoroughly all points raised by the Georgian side. Mr. Kushnirenko suggested the Georgian delegation to forward a letter with detailed description of all issues of particular concern of Tbilisi; then the Russian delegation would endeavor to reply to all Georgian questions.

As it was promised, in mid-November 2000 the Georgian Mission forwarded a list of questions to the Russian Mission with the following points: Russia's compliance between the process of its accession to the WTO and its commitments undertaken within the framework of the CIS Customs Union, request for removing from the list of bilateral free trade agreement exemptions for sugar and ethyl spirits, disparities of provisions of the Russian law "On temporary ban of ethyl alcohol imports" with the article XI of the GATT (1994), illegal use of well-known Georgian trademarks of alcoholic beverages and mineral waters by the Russian wine and nonalcoholic beverages producers, violation of provisions of the bilateral agreement "On customs check-points" (8 October, 1993), violation of provisions of the CIS agreement (19 January, 1996) "On measures for conflict settlement in Abkhazia, Georgia", restricting trade-economic and financial relations with the breakaway region, as well as regional trade and economic cooperation with Abkhazia.

On 12 December 2000 the Georgian delegation took part in the WP meeting which was mainly devoted to the trade in services. At the margins of the multilateral talks we held bilateral meeting with the Russian delegation as well. The Georgian delegation in both cases raised the issue about unilateral introduction of visa regime by Russia, effect from 5 December 2000, at the same time maintaining simplified visa regime with Abkhazia and South Ossetia. No meaningful reply has been received.

In January 2001 the Georgian Mission received a formal reply from the Russian delegation to a forwarded list of Georgian concerns. Actually it was an "evasion letter" which was written in "the best traditions" of the Russian bureaucracy – no clear answer, vague promises, no commitments to solve the problems and reluctance to seek mutually acceptable solutions. It was a clear manifestation of Russia's "Big Brother" syndrome – dismissive attitude toward former Soviet republics and to their legitimate rights and interests. It became clear: the negotiations will be quite difficult and long. During December talks the Georgian delegation complained on lack of progress and unwillingness from Russian side to seek mutually agreeable solutions and told Mr. Kushnirenko that if this attitude is retained Russia's accession process could take quite long, even 5 more years which does not serve to anybody's interests. The Russian delegation was unpleasantly surprised with these "unfriendly" revelations and reacted with sarcastic smile, which actually meant: "the dog barks, but the caravan goes on". Moscow was planning to complete negotiations by the Cancun ministerial to be held in 2003. Certainly the Georgian chief negotiator made a mistake: accession process took even longer – 11 more years (in total 18 years) with a lot negotiating rounds.

It was a great intrigue about the date for Russia's accession to the WTO which was quite difficult to envision. During the World Economic Forum held in New York in January 2002, Director General of WTO Mike Moore announced that he expects Russia to join the organization in two years time (Cohen, 2002). Russian Minister of Economic Development and Trade Herman Gref admitted that membership in WTO was not expected for at least till mid-2003 and the country's failure to join the WTO costs the Russian economy \$4 billion annually. After the latest round of negotiations with the Working Party, which was viewed as relatively unsuccessful, Maxim Medvedkov, made a more pessimistic forecast of three years (Cohen, 2002). Although the Russian leadership had demonstrated a strong commitment to accelerating the process, for them late 2003 was more desirable and realistic for completion of accession talks.

### *Statement of the Ministry of Foreign Affairs of Georgia*

In May 2001 the Permanent Mission of Georgia was tasked to draft a statement where it would be thoroughly explained the position of the Government of Georgia over talks with the Russian Federation. Tbilisi wanted to send a clear message to the international community justifying key points raised during the negotiations and using WP negotiations as a communication forum to expand the outreach to global actors. In early June 2001 the MFA statement was released and all Georgian diplomatic missions abroad were instructed to conduct consultations with foreign ministries in countries of accreditation and deliver thorough clarifications for main points of the statement. In our point of view, it will be easier to understand the diplomatic tactics of Georgia at the WTO negotiations if we go through each point of the statement which is given below.

*Georgia welcomes Russia's accession to WTO:* The Government of Georgia always attached great importance to the inclusion of the Russian Federation into the multilateral trading system and regularly expressed their formal support for Russia's accession to WTO.

*Russia's double approach policy towards Georgia:* Since dissolution of the Soviet Union, Russia has been applying preferential trade and economic regimes to two provinces of Georgia – Abkhazia and South Ossetia. Despite the Georgia's strong objections, the Russian authorities and federal entities were involved in trade with Georgia with a policy of double approaches with regard to the neighbouring country: on the one hand, they created certain obstacles in trade and economic relations with Georgia proper, while, on the other hand, Moscow actively promoted commercial ties with the mentioned breakaway regions, which run actually counter the basic principles of WTO. Furthermore, it was stated that Russia did not fulfil the commitments it undertook by decision taken by the Council of Heads of State of the CIS (19 January, 1996) and has developed close trade and economic ties with the separatist regime of Abkhazia.

*Russia's preferential trade regime with the Georgian breakaway regions:* The Government of Georgia expressed its concern over the fact that the commercial companies of the Russian Federation have significantly intensified their commercial activities and have established close entrepreneurship ties with their partners in Abkhazia and involved in real-estate developing business. On numerous occasions the Kremlin was officially informed about Georgian concerns and strategy over the breakaway regions, nonetheless, the Russian government was promoting its entrepreneurs to be actively engaged in the process of privatization, which run counter to the above-mentioned CIS decision.

*Opening and functioning of illegal border checkpoints:* Crossing of the state border of Georgia on the river Psou by the Russian Federation citizens travelling to Abkhazia and by foreign citizens (in most cases not having an entry visa to Georgia) who are admitted by Russian authorities to visit Abkhazia with tourist and other purposes, represents a violation of the Agreement between Georgia and the Russian Federation "On the customs border checkpoints" signed on October 8, 1993. Such actions also constituted a disregard of Decree № 140 of the President of Georgia, in accordance with which the Abkhazian sector of the state border between Georgia and Russia is closed for passenger and other types of international traffic.

*Introduction of a discriminative visa regime for Georgian citizens:* On December 5, 2000 Russia introduced a visa regime for Georgian citizens visiting Russia, which was viewed by the Georgian leadership as an unprecedented development in the centuries old history of friendly relations between the two peoples. Nonetheless, despite the inhospitable gesture causing the inconvenience to Georgian visitors, Tbilisi viewed that political move as expression of Russia's sovereign right. However, the Government of Georgia was seriously concerned about the unilateral decision of the Russian authorities to maintain the so-called "simplified

regime" of crossing of Abkhazian and South Ossetian sections of Russian-Georgian state border, which, in effect, represented nothing else but granting a preferential border crossing regime to the residents of those Georgian provinces as compared to the rest of Georgian citizens. Besides, local residents living in Abkhazia and South Ossetia have been allowed to move freely in Russia without any legal personal identification documents. Thus, legal entities and physical persons resided in Abkhazia and Tskhinvali region and particularly tourism service providers enjoyed a privileged status in carrying out their commercial and business activities in comparison with legal and physical persons representing Georgia proper.

*Introduction of a preferential border crossing regime for residents of Abkhazia and South Ossetia:* In justifying the above-mentioned preferential treatment measures, applied to the areas being beyond the control of the central authorities of Georgia, Russia often referred to humanitarian policies allegedly pursued by the Russian authorities for the benefit of the local population, residing in the post-conflict zone, from which ethnic Georgian population has been forcibly expelled. Such position of the Kremlin was in contradiction with its policy applied to its own regions. In particular, during crisis in Chechnya the Russian authorities repeatedly asked the Government of Georgia to close the humanitarian corridor from Chechnya which could have resulted in the imminent death of thousands of refugees, seeking asylum in neighbouring Georgia. Furthermore, the Ministry of Foreign Russia has been strongly advising Russian citizens to avoid travelling to the eastern part of Georgia, where refugees from Chechnya had found shelter. In the meantime the Russian authorities were promoting Russian tourists to visit Abkhazia, which has turned into a true nest of organized crime and lawlessness.

*The "creeping annexation" of two breakaway Georgian regions as part of Russia's aggressive strategy:* the above-mentioned actions were a clear indication of the schemes which go far beyond the so-called "humanitarian measures" and represented an attempt to ensure unlimited control and attempts for institutionalization of the breakaway regions. This was considered as a direct support to and strengthening of the separatist Abkhazian regime and undisguised desire to integrate these Georgian provinces with the Russian neighbouring regions. In this connection the MFA of Georgia made reference to the European Parliament's resolution of January 18, 2001 stating that discriminatory actions of Russia posed threat to the territorial integrity and sovereignty of Georgia. The European Parliament, particularly, recalled the Russian Government "... to reconsider these plans as they would amount to de-facto annexation of these indisputably Georgian territories" (European Parliament, 2001).

By addressing the questions of violation of internationally recognised trade rules (and not only), which for Georgia had both political and economic significance, the MFA of Georgia urged the Russian authorities to respect undertaken bilateral and multilateral commitments and to meet all WTO requirements and to stop discriminatory actions against the neighbouring country. At the same time the Foreign Ministry wished to draw attention of the international community to Russia's behaviour causing just enough disruption in Georgia and possibly in future, if not prevented acting on its worst imperial instincts, in vast near neighbourhood. The mentioned MFA statement became a conceptual platform of Tbilisi for further Georgian-Russian deliberations and in many cases was framed in terms of WTO rules. The Georgian delegation was trying by all means to avoid politicising of forwarded questions and requests, knowing in advance that Russia would complain against issues raised by Georgia as WTO inconsistent.

#### *Bilateral talks (21 January 2002)*

On 21 January 2002 yet another round of negotiations was arranged with the Russian delegation. The head of the Russian delegation, Deputy Minister of Economic Development and Trade Mr. Maxim Medvedkov decided to lead personally the delegation at the

Russian-Georgian talks. It was a clear demonstration of shift in attitude towards talks with Georgia: Russia, decided to pay more attention to the newborn "troublemaker" and at the same time to show to WP members and WTO secretariat "goodwill" towards Georgian concerns and willingness for substantive negotiations. It became clear from the statement of the MFA that Georgia had quite serious intentions "to fight till the end", and Russia wished to make all-out efforts to complete negotiations with Georgia as soon as possible. Apart from the issues, which have on many occasions been addressed during previous meetings, the Georgian delegation raised additional points:

*Introduction of new regulations on import of wine and wine products from Georgia:* The Georgian delegation further explained that redirecting of export of final wine products (bottled) from Georgia's Kazbegi-Upper Lars checkpoint to Russia by railways through the territory of Azerbaijan and allowing the export of Georgian wine materials only in Northern Ossetia for certain type vehicles (accompanied by special convoys), represented an unfair practice and hidden barrier to trade that impede the effective implementation of the free trade agreement concluded between the parties.

*Violation of intellectual property rights of Georgian wine and mineral water producers:* the Georgian delegation provided with numerous facts of abuse and illegal use of Georgian well-known trademarks and geographical indications in the Russian Federation, which undermined consumer loyalty and causing harm to the well-known Georgian brands, which were left in Russia without any legal protection.

*Violation one of the basic principles of GATT - Freedom of Transit (article V):* It was indicated that humanitarian cargos sent by the Swiss Government to Georgia have been detained by the Russian customs authorities (claiming that the humanitarian aid contained dual-use goods) for more than one year, not allowing the cargos to reach their final point of destination.

*Restriction of import of poultry products:* Russia introduced restrictions for poultry products originated from third-countries through the Georgian territory while allowing free access of Georgian poultry meat to Russian market. The Russian decision makers new well that Georgia at that time could not produce poultry products in enough quantities to export to Russia. By banning the mentioned and other products (distilled spirits, wine and wine products, oil and oil products, tobacco and tobacco products) Russia actually wanted to suppress Georgian transit potential: this action caused cancellation of contracts and goods already in transit were prevented from entering Russia with long track queues at the Kazbegi-Upper Lars border checkpoint. Moreover, the mentioned trade regulations resulted in losses to importers and intermediaries represented by quite a few Georgian commercial and transport companies.

In his comments, Mr. Medvedkov admitted that there are still some shortcomings in the trade regulations and particularly in customs rules and law enforcement practices. He further clarified that the closing down of an excise line at the Upper-Lars customs checkpoint, which has been of great concern of the Georgian government, was caused by internal Russian policies to combat corruption and optimize work of customs checkpoints. He then offered to redirect of Georgian cargo shipment to another "full-fledged customs checkpoints" particularly by railway through Azerbaijan to Russia (Ialama-Derbent checkpoint) or maritime transport to the Novorossiysk or Sankt Petersburg sea ports. As regards to the CIS agreement "On Measures for the Prevention and Repression of the Use of False Trademarks and Geographical Indications" (4 June 1999), Russia has already signed it and is going to ratify the agreement in the nearest future, which will create a legal framework for protection of Georgian well-known trademarks and geographical indications in Russia. Besides, responding to the question about interregional economic and trade cooperation of Russian regions (Krasnodarski krai/region and Kursk oblast/district) with Abkhazia, the Russian government requested that all regions to bring their legislation into



conformity with the Constitution and with federal laws, which will be strictly observed by the relevant Russian central authorities. In case of Swiss humanitarian cargo shipment which was detained by the Russian customs authorities for a year time, Medvedkov pointed out that two trains were detained in Rostov-on-Don and Derbent and sent back to Switzerland because "it contained dual-use items" and the following freight documents were not duly completed.

*The Georgian delegation commented Medvedkov's clarifications:* redirection of Georgian export from Upper Lars to other checkpoints will cause significant additional spending for freight owners and international carriers and actually represents nothing but, using WTO term, "a hidden barrier to trade". Regarding detaining and sending back the Swiss humanitarian cargo shipment destined to Georgia, the head of the Georgian delegation expressed his grave concern over violation of the basic GATT principle – "Freedom of Transit" and further pointed out that it was quite awkward and groundless blaming Swiss authorities "for ignorance of international transportation and humanitarian cargo shipment rules" when Russian authorities did not respond to the Georgian authorities numerous appeals for arranging the above-mentioned aid shipment. This type of "shortcomings" not only represent breach of international trade rules but also bore a systemic character and directed specifically against Georgia. In concluding remarks Medvedkov explained that he does not have enough powers to solve all posed questions but what he could promise to bring Georgian concerns to the highest political level for further consideration and settlement of all outstanding issues.

January 2002 talks marked the emergence of some positive signs coming from Moscow and a new hope was born on the road of the development of cooperative attitude of the Russian delegation. We thought that the ice has already been broken...

#### *Multilateral Talks (23-24 January, 25 April, 20 June, 16 December, 2002)*

On 23-24 January 2002 was held WP meeting with the agenda: review of bilateral negotiations, introduction of trade related legislation, review of trade regime. In the beginning of 2002 already 64 countries were engaged in the work of the WP and among them 54 countries were conducting bilateral talks with the Russian Federation. During WP deliberations the Georgian delegation raised several critical issues related to uncertain dynamic of bilateral talks, fulfilment of commitments undertaken by bilateral and multilateral agreements affecting trade in goods and services, customs regulations, border crossing arrangements and measures preventing outflow of smuggled goods from the Russian territory, the new import regulations and introduction of entry limitations for certain nomenclature of goods causing disruption of trade with neighbouring partners, violation of the "freedom of transit" GATT clause, introduction of discriminatory arrangements in trade in services with the neighbouring country, etc. US, EU, Canada, Australia, New Zealand, Japan, Baltic countries, Philippines raised numerous sensitive issues related to export-import regulations, export duties, import duties and taxes, tariff quotas, excise taxes, import licenses, agricultural policies and subsidies, price policies, sanitary and phytosanitary measures etc.

Very similar discussion we had in 2002 in April 24, June 20 and December 16: WP talks showed that progress was very slow, sometimes it stalled in endless "ping pongs" between WTO member countries and Russia. The Russian delegation was accusing not only Georgia but other countries as well (US, EU, Japan, Australia etc.) in requesting Russia to undertake commitments in many issues (double approach measures, hidden barriers to trade, export duties etc.), which go far beyond of the WTO scope. Head of the US delegation Ms. Cecilia Klein (Senior Director for WTO accessions, Office of WTO and Multilateral Affairs, USTR), was forced quite a few times to explain that the WTO rules are set by the member countries and the Working Party determines the terms and conditions of entry into the WTO for any country, including Russia.

I wish to recall our June 20, 2002 WP meeting when we once again raised the issue about Russia's dual policy approach towards Georgian nationals: for mainland residents Russia introduced a visa regime but for breakaway regions retained a simplified border crossing arrangements. In this connection we requested incorporation into the WP report the following wording: *"In response to a request from a member of the WP, the Representative of the Russian federation confirmed that Russia would not discriminate among nationals of any Member when entering the Russian Federation under the General Agreement on Trade in Services (GATS)"*. During our statement we explained that the movement of natural persons is strictly regulated by the GATS norms. Thus, any WTO accession commitment should be made with respect to persons supplying a service. As far as the Russian delegation has demonstrated its position to fully comply with the basic principles of the GATS and not to apply any kind of disadvantaged treatment to partner country's nationals engaged in supplying services under mode 3 and mode 4, regardless of their ethnicity or place of origin, the Georgian delegation requested to fix the commitment in the accession report, which was unanimously supported by the Working Party. Here we should note that the Georgian delegation prior to bringing concerns before the WP regularly consulted with relevant WTO departments and experts on all key issues; a few times the consultancy assistance was provided by Mr. Richard Self, senior international assistant for WTO applicant countries, former attaché at the U.S. Mission to WTO, who as a member of USTR delegation, negotiated the accession of Georgia to WTO in 1996-1999.

It became clear that Russia since January 2002 bilateral talks did not seek more opportunities to meet the Georgian delegation, because they could offer nothing new to the "small, but proud" neighbour. That is why Russia concentrated on negotiations with the global trade actors, hoping to leave Georgia at the end of the meal, in other words as a "sweet" dessert, which can be easily digested.

It was a great intrigue about the date for Russia's accession to the WTO which was quite difficult to envision. During the World Economic Forum held in New York in January 2002, Director-General of WTO Mr. Mike Moore announced that he expects Russia to join the organization in two years time. Minister Mr. Herman Gref admitted that membership in WTO was not expected for at least till mid-2003. After the latest round of negotiations with the Working Party, which was viewed as relatively unsuccessful, Maxim Medvedkov, made a more pessimistic forecast. Although the Russian leadership had demonstrated a strong commitment to accelerating the process, for them late 2003 was more desirable and realistic for completion of accession talks (Cohen, 2002).

#### *New appointment*

On October 28, 2002 I received a phone call from President Shevardnadze who told me that he is closely watching how we work in Geneva and expressed his satisfaction and appreciation for the efforts the Georgian Mission has undertaken, particularly with regard to WTO deliberations. We have never been spoiled with his attention and we knew well his habits - when he praised anyone it did not bode well for him. I found a key to Shevardnadze's call puzzle when in a month time I learnt that I have been appointed Deputy Minister of Foreign Affairs and to Geneva was sent a former Minister of Foreign Affairs of Georgia, heavy weight Soviet era diplomat Mr. Alexander Chikvaide. Shevardnadze had very uneasy relationship with the latter, sometimes very tense. At the beginning Shevardnadze was guided by the Machiavellian principle "keep your friends close, and your enemies closer". Later the relationship conflict has become unbearable for the President and for him it was more suitable to use the Russian proverb: "out of sight, out of mind/heart". Chikvaide was a diplomat, so called "generalist": for him "devil was in the details"; moreover, economy and trade had never been his favourite themes. In February 2003 I moved to Tbilisi to assume my new duties, besides the President reappointed me as head of the Georgian delegation on WTO accession negotiations and in the meantime I retained the

post of permanent representative to WTO – actually I became a roving ambassador shuttling between Tbilisi and Geneva for all WTO talks.

### *Bilateral and Multilateral Talks (2003-2004)*

Next round of bilateral and multilateral negotiations on Russian accession to WTO took place on 7-10 April 2003. During the bilateral talks, the Russian Federation was represented by director of department of customs regulations of the Ministry of Economic Development and Trade Mr. Andrey Kushnirenko; during multilateral negotiations the Russian delegation was led by Deputy Minister of Economic Development and Trade Mr. Maxim Medvedkov.

The bilateral agenda for the Georgian delegation included the following points: creation more cooperative and results oriented environment for bilateral talks, granting to Georgia Initial Negotiating Rights, elimination of illegal customs checkpoints at the Abkhazian and South Ossetian sections of the Russian-Georgian state border and recognition of certificates of origin of goods exported from Abkhazia and Tskhinvali region by the Russian customs authorities, Russian discriminative approaches towards Georgian business operators working in the field of trade in services.

### *Arranging Meaningful Bilateral Talks*

The Georgian delegation referred to the meeting that took place in March 2003 in Moscow between Russian Deputy Foreign Minister Mr. Andrey Denisov and Georgian Ambassador to Russia Mr. Zurab Abashidze, where the Russian senior diplomat expressed desire that the all outstanding issues to be discussed in a bilateral format, preferably refocusing on conducting talks in the both capitals. We clarified that Georgia always expressed its readiness to conduct bilateral negotiations with Russia within the established WTO norms and practices. Here it should be mentioned that before the scheduled multilateral negotiations over Russia's accession to the WTO, the Georgian delegation on several occasions formally contacted the Permanent Mission of the Russian Federation in Geneva, with an offer to arrange bilateral meetings at the margins of the WP deliberations. Georgia wished to exchange views over the outstanding issues that were raised earlier in order to discuss possible solutions and to avoid any complications during multilateral discussions. Both the Russian Permanent Representation in Geneva and the delegation to WTO did not show the same degree of cooperation. Apparently, on the one hand, Russian delegation, as a primary task, wanted to complete bilateral negotiations with the main trade actors – US, EU, Japan, China (since 2002), India, Australia, Canada etc., and then jointly to raise pressure on tiny Georgia for getting a WTO membership ticket. On the other hand, Russia wanted to remove the "Georgian awkward factor" from the WP deliberations: the Georgian statements, uncomfortable questions asked at multilateral talks and permanent pressing over whole range of trade related issues often puzzled the Russian delegation. That is why the Russian authorities wanted to keep the negotiations with Georgia at bay, somehow neutralize the Georgian assertive behaviour and move bilateral negotiations from Geneva to Moscow or Tbilisi where they felt much more comfortable and where Russia could use all range of "easily convincing" tools being at their disposal to calm down Georgians who have gone too far against the "big brother".

### *Initial Negotiating Rights*

Since accession to WTO Georgia, as a small country, has used its membership to gain Initial Negotiating Rights (INRs) from applicant countries. The INRs arrangement allows member country to request compensation if the applicant country after accession modified or abolished the INRs. The latter has to be registered

in national concessions' tables, and attributed to countries that have been previously negotiated on the matter. There are detailed clarifications about methods in which WTO members can modify or withdraw a registered concession in their national tables in article XXVIII of the GATT 1994 (World Trade Organization, 1994). If a newly acceded country modified a concession or has withdrawn the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The mentioned country has to negotiate and agree with other member countries who negotiated those (INRs) in the past, as well as with members having principal supplying interest. In this context, to have a substantial interest in a commodity trade is to possess a **"substantial share" of that trade in the markets of the country tending to offer the concession. According to WTO practice, there is no clear definition of threshold of "substantial share"**, though in general 10% is considered substantial (Kavadze, Ukleba, & Katamadze, 2003).

On 15 January 2002, official Tbilisi asked the Russian Federation to grant Georgia with INRs on the certain commodity nomenclature, which usually was exported from Georgia to Russia. The Russian Ministry for Trade and Economic Development agreed to grant those rights, but significantly reduced in the number of commodities that were originally requested by the Georgian delegation. On 31 December 2002, the Permanent Mission of Georgia formally applied to the Russian Permanent Representation with an official note, stating that Georgia did not agree with Russia's decision to grant Georgia INRs with only limited list of commodities.

Kushnirenko informed the Georgian delegation that he has carefully studied the Georgian request and pointed out that Russia automatically conferred Georgia INRs on commodities that are equal or above 10% of total Georgian export to Russia. However, Russian side did not consider it reasonable to grant similar rights to those products, from which Georgian import share was insignificant. At the same time, the head of the Russian delegation stated that this kind of request from the Georgian side was incomprehensible, considering that the free trade regime was operating between Russia and Georgia. Furthermore, Russia did not receive the same requests either from other WTO members - Moldova or Kyrgyzstan, who similarly had preferential trade regimes with Russia. Thus, as for Kushnirenko, the Russian side does not understand the type of dogged persistence the Georgian delegation has been perusing for getting INRs for low profile importable goods.

In response, the Georgian delegation pointed out that Georgia, as a small and vulnerable economy, wishes to safeguard against future unpredictable decisions of the Russian Federation; it was mentioned that a few years ago no one could predict that Russia would unilaterally introduce visa regime for Georgian citizens and unilaterally withdraw from the CIS multilateral free trade agreement. Georgia considers that in current conditions, when political considerations dominate over the decision making on economic and trade related issues, it is possible that in future Russia can break any multilateral and bilateral free trade arrangements. It was logical for the Georgian delegation to request INRs for those products that represent particular interest for Tbilisi, as it may be considered as one of economic security priorities of the country. We further explained that apart from traditional goods exported to Russia, Georgia also produces certain nomenclature of goods that have a significant export potential in future. That is why Georgia requested INRs to be granted to those commodities that were listed originally in the Georgian appeal. The head of Russian delegation took note of the Georgian request and promised to increase significantly the number of the listed goods.

### *Illegal Customs Border Control*

The Georgian delegation put forward a question concerning the decisions that was taken by the Russian State Customs Committee, according to which the Russian Federation unilaterally opened additional customs border checkpoints at the Abkhazian (at river Psou

– Gantiadi-Adler checkpoint) and the South Ossetian (Roki-Lower Zaramag checkpoint) sections of the Russian-Georgian state border, thus breaking the existing bilateral agreements over bilateral arrangements of border crossings. The Georgian Delegation noted that despite a number of attempts taken by the Georgian Customs administration, the problem still remains unresolved. Besides, it was particularly remarked the importance of creating the largest customs border checkpoint in the Southern Federal District of Russia in Lower Zaramag, with crossing capacity of 1000 tracks a day and establishment of a proper customs processing and clearance infrastructure. At the same time he pointed out that at the main legal border checkpoint – the Upper Lars – not only was not equipped it with relevant infrastructure, but also was not assigned with sanitary and phytosanitary control measures for proper inspection of imported agricultural products.

The Russian delegation stated that opening of the Gantiadi-Adler border checkpoint was caused by necessary to bring in military supplies for Russian peacekeeping forces stationed in Abkhazia. The Georgian delegation emphasized the existence of other legal ways to supply the Russian peacekeepers, besides the mentioned ones. It was advised to the Russian delegation to use border checkpoint in Kazbegi-Upper Lars as well as Poti or Batumi maritime ports. Moreover, the Georgian delegation stressed that the Russian military bases, located in Georgia, generally receive such goods without any difficulties by using already agreed routs. We also pointed out that according to the recent statements, Russia has withdrawn the Russian military base from Abkhazia and particularly from Gudauta and claims over necessity of intensive military supplies for Russian military units deployed in Abkhazia are far from reality (certainly it was misleading press release issued by the Russian Foreign Ministry, which was performed in the best traditions of Russian/Soviet propaganda; the Kremlin has never had in mind to leave Abkhazia and following events have proved that) (Tskhovrebashvili, 2001), (Shaffer & Ziyadov, 2012, p. 207).

The Russian delegation clarified that the Gantiadi-Adler railway border checkpoint is designated to pass military cargo shipments as well as dual-use items and equipment, while the only mutually agreed customs border checkpoint located on the "Georgian Military Highway" – Kazbegi-Upper Lars – is not assigned for passage of the mentioned cargo shipments. The Georgian delegation noted that by setting up unilaterally the customs checkpoints at the Abkhazian and South Ossetian sections of the state border, meant breaking the bilateral agreement signed on 9 October 1993 which envisaged putting into full operation the only checkpoint - Kazbegi-Upper Lars.

Representatives of the Russian delegation stated that Moscow wants to solve the problems related to border control and asked the Georgian delegation to elaborate jointly some propositions over finding practical solution of this issue. We welcomed Russia's constructive attitude towards this matter and offered a suggestion to conduct meetings between Russian and Georgian border guard/police and customs service authorities in order to carry out technical analysis of the issue and determine practical steps for settlement of the problem. The Georgian and Russian political leadership could get involved in this process at the next stage of negotiations.

### *Trade in Services*

**Restrictive visa regime:** Regarding unilateral introduction of the discriminatory visa regime towards Georgian citizens, Kushnirenko explained, that a lot of countries in the world introduced visa restrictions for certain groups of citizens: for example, US introduced a number of visa restrictions for Iraqi and Libyan citizens. The Georgian delegation pointed out that Tbilisi asked Russian authorities to work out a common and unified visa policy towards all Georgian citizens, in order to prevent discrimination on grounds of regional residency inside the country. The above mentioned regime has a direct influence on Russian market and particularly on mode 3 (commercial presence - the supplier's right to establish and maintain a commercial presence in the relevant Member's territory) and mode 4 (movement

of natural persons – which relates to foreigners supplying services in another country) of service supply. We further clarified that visa arrangements elaborated towards another country should be put on an equal footing for all regions and all groups of citizens and a WTO acceding country can be requested to undertake the terms of a specific commitment on the matter. In response Kushnirenko asked the Georgian delegation if it would be enough to solve the problem Russia could undertake commitments related to this issue before becoming a member of WTO, as Georgia has been asking since commencement of negotiations.

### *Customs Regulations and Checkpoints*

On 9 April 2003, Vice-Chairman of the State Customs Committee Mr. Aleksey Kaulbars held additional bilateral meeting with the Georgian counterparts to discuss in details the border customs control issues. It is important to mention that Mr. Kaulbars was quite constructive and showed understanding towards concerns of Georgia and offered his assistance in solving existing problems. As he explained, introduction of new regulations on import of spirits, wines and other alcoholic beverages was a necessary measure to strengthen control on influx of excised goods imported from Georgia to Russia via customs checkpoint in Kazbegi-Upper Lars, and these restrictive measures were directed against alcohol smuggling and so-called "spirits/vodka wars" in Russia and particularly in North Ossetia. Though, as he pointed out, Russian authorities are ready to continue negotiations to achieve a mutually acceptable settlement of issues in dispute.

The Russian delegation explained that the reason behind the setting up and functioning of the customs check points in Abkhazia and South Ossetia was to supply Russian peacekeepers with military equipment, ammunition and dual-use goods which was in full conformity to Russian customs regulations and therefore Russian relevant institutions asked the Georgian colleagues to discuss bilaterally how to arrange customs service. We admitted that Moscow a few times applied to the Georgian government for elaboration of amendments to the bilateral agreement of 9 October 1993, however the Georgian authorities could not meet the Russian request to achieve mutual arrangement on opening the above mentioned checkpoints, because the country cannot exercise its jurisdiction over Abkhazia and South Ossetia. The Russian delegation expressed its readiness to collaborate with Georgia in order to solve existing problem. We asked to Mr. Kaulbars whether it would be possible to discuss, as one of the options, to let the representatives of Georgian customs officers to work together with Russian colleagues in the above mentioned check points: this type of joint border management cooperation would allow Georgian side to monitor movement of goods, gather more accurate information about the movement of goods that are passing through those check points and prevent illicit trade with Georgia.

As to Mr. Kaulbars, in 2001 he met former Georgian Tax Collection and Revenue Minister Mr. Mikheil Machavariani and almost reached an agreement on the above mentioned issues, but after the latter's departure and merger of the Georgian tax/revenue administration with the Ministry of Finance, everything has been abandoned and forgotten. Mr. Kaulbars offered his high offices to for settlement of all outstanding issues, which envisaged conducting another round of talks with all concerned parties and also asked for other additional suggestions from the Georgian side which could catalyze the resolution of the problems. He also promised to enlist support of Mr. Mikhail Vanin, the Chairmen of the Customs Committee of Russia, in the mentioned deliberations. Mr. Kaulbars, as a technocrat and high ranking Russian customs official, was quite optimistic about outcome of bilateral discussions. He believed in feasibility of a mutually acceptable resolution of all disputed issues, especially if "politics does not influence the settlement of trade related issues", including customs regulations. He honestly thought that existing disagreements can be solved painlessly if those problems were discussed at the highest political level.



### *The CFertificate of Origin*

The Georgian delegation raised the issue about a certificate of origin of goods exported from Abkhazia and South Ossetia. It was explained that the certificate of origin in Georgia is issued by the Chamber of Trade and Industry or through its regional branches. However, Abkhazian and South Ossetian authorities cannot issue a certificate of origin unless the constitutional order is restored in these regions. Besides, it was reminded that Russia must adhere to the CIS agreement "On Rules for Determining the Country of Origin of Goods" signed by Russia on 30 November 2000. Mr. Kaulbars admitted that some Russian customs officials abuse formal duties and accept false certificates of origin and stamps, or allow the abuse of the customs regime by unjustifiably using preferences and customs concessions. He asked us to give him full information about the national rules of origin and a list of institutions issuing those certificates (CT-1 certificate): this would allow Russian customs officers to impose a strict control on legalities of certificates issued by the de facto authorities of Abkhazia and South Ossetia.

The way, how issues were discussed by Kaulbars and the Russian side was dealing with the Georgian concerns, made us think that neither the Ministry of Foreign Affairs of Russia nor the Russian ruling political elites did not wish to find a solution on the above mentioned problems. This hypothesis was strengthened by the fact that the Russian Foreign Ministry did not respond to a number of Georgian MFA's official requests related to the resolution of the mentioned issues. During the talks, the Russian customs official was wondering if those questions were asked at the level of Foreign Ministries and whether they were responded. Analysis of the information gathered during the meetings let us believe that the Russian leadership did not have a political will to settle those problems, at least till April 2003. On the other hand, the Russian customs administration was not able to resolve disagreements unilaterally, despite its strong desire and a will.

During April 2003 bilateral negotiations the Russian delegation showed some signs of interest (at least, how it appeared to us) in settling of disputed issues. As it was already mentioned, during 2001-2002 talks the Russian delegation was ignoring many points raised by the Georgian side arguing that the posed questions are beyond the scope of WTO. In early 2003 Russia understood that by just neglecting the Georgian concerns at a certain stage it would lead to the deadlock of the entire accession process. In any case, the Russian tactics over negotiations with Georgia was changed towards seeking new ways of solving problems and actually this shift was considered as a positive sign. The visa issue was of particular concern and quite sensitive for the Georgian government: if earlier Russia tried to convince WTO member countries that Georgian problems were outside of the WTO scope, in 2003 Russia implied that one of the ways to solve problems would be a commitment undertaken by Russia to abolish the discriminative visa regime from the first day of its WTO membership, or in any case to put on an equal footing the two breakaway regions with Georgia proper. But on the other hand, it may be possible that Moscow was trying to win more time that will allow Moscow to grant Russian citizenship to the great majority of residents of Abkhazia and South Ossetia. Thus, by the time when local residents became Russian citizen, there will be easy to apply to the common visa policy for entire Georgia, including the mentioned two provinces. In other words, Russia was trying to play a zero-sum game, whether it was possible.

### *Multilateral Negotiations*

On 8 April 2003, informal multilateral negotiations were conducted by the special working groups that were designed to help Russia's accession to WTO. During the negotiations, a number of questions related to Russian accession to WTO were discussed individually. The main topics on the agenda were issues related to the customs regulations, protection of intellectual property rights and trade in services. As for the Georgian delegation, it was pointed out that the issues related to the Georgian concerns were not reflected in the

draft WP report. The informal meeting, firstly, urged the Russian delegation to answer all questions asked by the Member countries, and, secondly, the WTO secretariat - to scrutinize carefully all raised issues and to reflect all inquiries in the draft report.

Official multilateral negotiations took place on 10 April 2003. The WP discussed the results of bilateral market access negotiations and strategies for future deliberations. At the same time, member countries gave general evaluation of the current accession process, during which were selected certain directions that required more work. Member countries underlined the fact that in 2003 all three WP meetings were productive, as Russian delegation provided explanations to great majority of posed questions.

At the same time, the Member countries pointed out that it is very important for them that the Russian Federation ensures transparency and efficient implementation of the customs regulation system. Besides, the Russian Federation must pay a special attention to the issues related to agricultural sector, service regime, tariff quotas, intellectual properties rights and other related issues. At the same time, the Russian delegation was asked to reconsider seriously its position over tariff quotas. Mr. Medvedkov was reminded that, if the above mentioned practice remains, Russia will be required to conduct a serious work in order to reflect necessary justification and trade policy tools used to protect domestically-produced commodities from competitive imports which should be thoroughly reflected in the working party report.

Medvedkov briefed the WP concerning the bilateral market access negotiations: since the last WP meeting the Russian Federation conducted 40 rounds of market access bilateral negotiations with 32 member countries. By end of the year the delegation planned to conclude talks with 18 WP participants. As about the bilateral negotiations related to market access in services, the Russian chief negotiator further explained that talks are quite slow and are conducted only with WTO 15 members. According to the WP member statements, there were serious differences on a number of issues between the sides. They requested the Russian delegation to demonstrate progress in tariff reduction commitments on significant number of listed goods and introduce a more liberal market for service providers and work hard in order to bring its trade regime in conformity with WTO rules.

At the WP meeting the Georgian delegation made statement regarding the certain outstanding questions. It was explained that during previous Working Party meetings the Georgian delegation was regularly expressing disappointment over deadlock in bilateral talks and Tbilisi was persistently insisting on the Russian side to demonstrate pragmatic approach in order to resolve existing disputable issues of bilateral trade agenda. We informed the WP that the April 2003 bilateral market access negotiations showed some signs of progress. It was emphasised that Georgia always had sincere desire and willingness for in-depth consideration of all existing problems. Since June 2000 both Russia and Georgia travelled a long and uneasy road: initially the delegation of the Russian Federation was rejecting the legitimacy of questions posed by the Georgian delegation, at a later stage it was just reluctant to be engaged in the process of consideration of those significant points, finally, during last negotiations round the Russian Federation has demonstrated a positive signs of goodwill for finding out the ways of mutually agreeable solution of those problems. The issues having critical importance for Georgia remained still outstanding and needed to be resolved prior to Russia's accession to the WTO. The Georgian delegation expressed a hope that the appropriate action and results-oriented work will be pursued by the Russian Federation in order to resolve the questions raised by the Georgian delegation in the course of bilateral and multilateral negotiations.

*Strategy for future actions:* The Georgian permanent representation to Geneva was regularly sending communications to the MFA with suggestions how to resolve all outstanding issues on the inter-governmental level. The priority was given to the multilateral negotiations with Russia (bilateral talks were progressing slowly and still WP discussions could yield some meaningful results), during which



the issues of customs regulations and illegal checkpoints could have been discussed. For this purpose it was advisable to arrange a meeting between the customs agencies of both countries. At the early stage, Georgian and Russian customs officials could discuss technical aspects of cooperation and mutual administrative assistance. At a later stage a political decision could have been taken at the governmental level. The Russian delegation expected that the next round of negotiations was to become practically a breaking point in the Russia's accession long process. By September 2003 it will have become clearer whether Russia is able to complete the accession process before the Cancun WTO ministerial (10-14 September, 2003). Accordingly, it was advised that the Georgian side had to be well prepared for upcoming meetings and therefore all key issues had to be fixed in the WP report. Besides, the Georgian mission in Geneva was suggesting the MFA that relevant governmental institutions to study and analyze carefully the draft WP report, to identify critical issues and then to forward instructions to the Georgian delegation in order to assure that all Georgian concerns are properly reflected in the WP report.

### The Rose Revolution: A Short "Honeymoon" or the Calm Before the Storm?

In November 2003 Georgia entered into a deep political crisis: thousands of demonstrators took into the streets to protest against alleged vote rigging of a November 2003 parliamentary election. The protesters demanded the resignation of Eduard Shevardnadze, a man who had ruled Georgia for more than 3 decades (in total). As a result of mass protest actions, Shevardnadze resigned bringing into power a coalition of three opposition leaders – Mikheil Saakashvili – President, Zurab Zhvania – Prime-Minister and Nino Burjanadze – Speaker of the Parliament. After the Rose Revolution Georgia was run by well educated, motivated and sometime even aggressive, ambitious young politicians, who were in a hurry to build a prosperous and western style country.

One of the main foreign policy priorities of the new government was rapprochement with Russia. On 10 February 2004, President Saakashvili paid his first official visit to Moscow and met President Putin. The young Georgian leader promised to extend his friendly hand to his Russian counterpart, turn a very dramatic page in our past and start relationship from the "clean slate". A friendly atmosphere of the meeting raised hopes in Tbilisi about possible improvement of the relationship between Tbilisi and Moscow. Apart from consideration of trade-economic, military issues, as well as seeking new ways for restoration of Georgia's territorial integrity, the Kremlin and Tbilisi agreed to sign a new bilateral framework agreement on friendship and good neighbourly relations, President Putin was invited to visit Tbilisi in near future (the invitation was kindly accepted), and act in international arena taking into account mutual interests.

In mid-February of 2004 I was summoned to the office of the National Security Council (NSC) of Georgia and was asked to present a progress report over the Georgia-Russia WTO accession talks. I briefed the newly appointed NSC secretary Mr. Vano Merabishvili about my vision and perspectives of multilateral and bilateral talks. I informed Merabishvili about some achievements in multilateral negotiations format, particularly noted that nearly all Georgian concerns have already been fixed in the WP draft accession report; however, as further I explained, while bilateral talks have been stuck because of Russia's unwillingness to solve all existing problems, some promising signs have already been observed. He told me that the political leadership of the country decided to complete the bilateral negotiations with Moscow and to sign the market access agreement as soon as possible. I delicately raised the question about the price the government is going to set for this kind gesture and expressed the hope that the government will get the best bargaining deal with the Kremlin. He responded with a knowing smile: "Don't worry; this matter will be in reliable and capable hands". In the meantime I was instructed to relinquish all my duties including WTO ones and to leave Tbilisi for London – to

the place of my new ambassadorial assignment. Soon it was publicly announced that the Georgian government reached an agreement over bilateral talks with Russia which will be concluded in the margins of the business forum to be held in Tbilisi on 28-29 May 2004.

On 28 May 2004 Minister of Economy of Georgia Mr. Irakli Rekhviashvili and Minister of Economic Development and Trade of the Russian Federation Mr. Herman Gref concluded in Tbilisi a bilateral market access agreement. Russia granted Georgia requested INRs; besides the separate protocol was signed where Russia pledged to eliminate all inconsistencies in the field of customs regulation and administration, and to bring its trade policies and practices into conformity with WTO principles and norms. Georgia, in its turn, committed to complete in near future national procedures for entering into force of the protocol of 3 February 1994 over exemptions from the bilateral free trade agreement.

In the meantime the Kremlin wanted to build a type of vassalage relations with Georgia. For Moscow it meant demonstration of seniority in the region and subordination to the dominant country, showing that the boss can be "very kind and grateful" and at the same time punitive if it is needed (the "carrot and stick" approach). Here should be particularly mentioned the Russia's significant role in peaceful departure from power of Adjarian secessionist warlord Aslan Abashidze, who showed his dictatorial habits and growing separatist tendencies since his rise to power in early 90s. Moreover, his power was safeguarded by the Russian military base stationed in Batumi. The tensions erupted between the leadership of Adjara and the new central authorities of Georgia and has almost reached boiling point in early May 2004. Saakashvili regime was even ready to use military force aiming at restoration of control over Adjara. As the Tbilisi-Batumi confrontation played out, Georgia once again was at the edge of a civil war. On 5 May, Prime Minister Zhvania went to Adjara to hold talks with Abashidze and joined the protest rally in the center of Batumi against the local dictator. Suddenly President Putin offered his help to Saakashvili and commissioned Russia's Security Council Secretary Mr. Igor Ivanov to Georgia, who on 5 May 2004 first flew to Tbilisi and then to Batumi to mediate the standoff. Ivanov convinced Abashidze to step down, offered political asylum to him and his entourage and his private jet to leave Adjara immediately. On 6 May early morning Abashidze resigned and flew to Moscow into exile. On the same day President Saakashvili made a triumphant appearance in Batumi celebrating liberation of Black Sea region from the "medieval time feudal". Actually it was a price the Kremlin paid off for Georgia's "goodwill and cooperative attitude", including conclusion of bilateral market access accords with Russia.

Flushed with success after liberation of Adjara, the Government of Georgia sought to bring two other breakaway regions back into the Tbilisi fold. Saakashvili now turned to another breakaway region – South Ossetia, which he considered much easier to bring under the constitutional order than Abkhazia and at minimal cost. He expected President Putin would support him as in Adjarian case or at least the Kremlin could turn his blind eye to Georgia's attempts to return back the Tskhinvali region. However, on 8 July 2004 several dozen Georgian peacekeepers deployed in Tskhinvali conflict zone were disarmed by Ossetian militia forces and then were brought to the centre of Tskhinvali and forced to their knees in front of TV cameras. The Georgian leadership got furious and launched a military operation on 8 August 2004. By August 19, Georgian troops captured strategic heights and started shelling regional capital Tskhinvali. However under the Russian heavy pressure and fierce resistance of Ossetian militia forces the Georgian command handed over these heights to the joint peacekeeping troops and pulled out from the conflict zone. Saakashvili by launching this operation made several mistakes: firstly, Georgia did not have any capable military forces to win even a "small victorious war", secondly, the President was misled by Minister of Interior Mr. Irakli Okruashvili who assured the President that the city would be taken in 24 hours (later he admitted that Okruashvili was the "biggest mistake of his life"), thirdly, he miscalculated the Russian reaction and consequences of the military conflict: the operation ended with quite

heavy results – 17 dead, several dozen injured of Georgian servicemen and shameful retreat to initial positions and finally spoiled its relations with the northern neighbour. This brief war was a turning point in Russian policy towards Georgia. After August 2004, the sequence of events showed that the Georgia-Russia honeymoon was over. Russia, considering that security of Russia's South flank depends on the situation in South Caucasus, and offered undisguised support for the separatist regimes and started speaking with Tbilisi from a position of strength – using combined diplomacy, both hard and soft power to have Georgia more obedient to the Russian will. Actually for Moscow low politics became a supplement for high politics; the Kremlin sought restoration of Russia's greatness and influence both in near neighbourhood and globally; the mentioned security and foreign policy priorities predetermined Putin's politics and actions for the decades ahead.

## The Deadlock

From 2004 onward the centre of gravity of WTO relationship and trade policies had been shifted from MFA to the Ministry of Economy of Georgia. Deputy minister Ms. Tamar Kovziridze was appointed chief negotiator.

In 2004-2006 political environment for the Russian-Georgian WTO talks was very adverse. For Georgia it was not easy to stand firm to Moscow's sabre-rattling; in the following years the Kremlin was able to exert considerable pressure over Georgia on all directions. Particularly, the Russian government pursued policies of "double standards": fighting the secessionist movement at home yet evidently supported separatism in Georgia. Gas delivery manipulation, regular violating Georgian airspace, bombings adjacent to the breakaway regions, provocative actions of the Russian peacekeepers became a daily routine for the Georgian-Russian relations. In February 2006 Russia stopped issuing visas for Georgian nationals, in March 2006 banned import of Georgian wine and wine products, then distilled alcohol and brandy; later sanctions were expanded to mineral waters and all agricultural products. In July 2006, Russia "temporarily" closed Kazbegi-Upper Lars border checkpoint for "construction reasons," disrupting Georgian exports and inland and transportation connection with Russia.

Nonetheless, there were some signs of cooperation in 2005-2006. On May 30, 2005 Russia and Georgia signed a long-negotiated agreement on the withdrawal of Russian military bases from Georgia and started pulling out its two military bases dislocated in Batumi and Akhalkalaki on an accelerated time-frame. According to the concluded accords, parties agreed to set up an antiterrorist centre in Batumi, which has never occurred despite the Russia's many appeals. On top of that the spy scandal of September 2006 entirely destroyed any signs of rapprochement. When Georgia arrested four Russian intelligence officers and ten Georgian citizens on espionage charges, and later handed over to the OSCE delegation with a staged TV show (quite humiliating one), a tipping point was evidently reached. Putin's self-esteem was deeply hurt; the Kremlin felt that Georgia let them down, and reacted promptly: Moscow recalled the ambassador and diplomatic staff from Tbilisi, the troop pullout was postponed, all transport and postal links between the two countries were suspended, Georgian-run businesses in Russia were harassed and thousands of Georgians were deported from Russia. In January 2007 "Gazprom", Russia's sole natural gas exporter, doubled price of gas imports to Georgia.

Certainly, crisis escalation affected Georgia's attitude towards WTO talks as well. In February 2006 Georgia started its consultations with the partner countries over possibility of suspending work of the WP. The MFA sent out instructions to its embassies abroad to hold meetings in the western capitals informing the EU member countries and Washington regarding Tbilisi's intentions to reopen bilateral talks with Russia and as a last resort to block the work of the Working Party. As a Georgian ambassador to the Court of St. James's I had consultations with the FCO officials – Mr. Creon Butler, Chief Economist, Director Economic Policy Department

and Mr. Paul Carter, Russia and CIS Economist, Global Economy Group. UK's main concern was related to the issues of protection of intellectual property rights, enforcement of newly adopted legislation; the UK envisaged Russia's accession to the WTO, in general, as a positive act in view of the fact that the WTO could put into effect its rules and principles which will create a reliable framework to avoid in future Russia's any WTO inconsistent or discriminatory policies against its trade partners. London was inclined to think that while the WTO member countries, having Russia as a WTO member, would have much more power to observe and impose control against Russia's trade related barriers and restrictions; as the British diplomats suggested, the US-Russia bilateral discussions might have more effect than any other ongoing bilateral or WP party meetings. The FCO officials assured us that they work closely with Brussels: the DG Trade had its concerns over implementation of commitments undertaken by Russia and during upcoming WP meetings the EU delegation intends to send clear messages to Russia about necessity of removal of all WTO inconsistent measures and practices. In the meantime the British diplomats were wondering if Georgia, at the certain stage, could block Russia's accession process. We reassured the FCO officials that if bilateral talks reached the extreme point and yielded no meaningful results, Georgia can use veto right over the accession process, though Tbilisi will conduct consultations on the matter with US and EU in advance. Later in 2006-2010 I had similar talks with Swedish and Finnish Foreign Ministries: both Stockholm and Helsinki were wondering if Georgia could block Russia's accession process and how long it will take to arrange bilateral relations.

On July 14, 2006 Tbilisi renounced its bilateral market access agreement on Russia's accession to the WTO. As MFA stated, Georgia had opted to withdraw from the May 28, 2004 agreement in protest against Russia's closing of the only legal Kazbegi-Upper Lars checkpoint, while Russia's checkpoints with the separatist regions of Abkhazia and South Ossetia remained in place and in full operation.

In autumn 2006, the Government of Georgia sent a letter to WTO Director-General Pascal Lamy wishing to suspend further meetings of the WP, unless Russia lifts discriminatory sanctions against Georgia. The secretariat together with WP members decided to accommodate Georgia's request, however it was offered to convene informal consultations which will allow working on consolidated document, just a draft for informal consideration. Since that time no single formal WP meeting was held the WP report had to be approved by consensus. The last version of the draft report was circulated in October 2004. Georgia wanted to include into the text the wording that would reflect all its concerns and resisted the formal publication and circulation of the WP report. After rather tens discussions it was agreed that the secretariat would circulate the draft material as an informal document entitled "consolidation of draft texts". As Icelandic Ambassador Stefan H. Johannesson, the chairman of the WP on Russia's WTO accession, recalls: "this was a pragmatic solution and demonstrated that while Georgia had unresolved issues with Russia it was willing to be constructive and to take the concerns and interests of other members into account and allow a substantive work to be continued" (Johannesson, 2015, p. 597).

In January 2007 Georgian and Russian delegations held several bilateral meetings at the WTO HQ. As a result of the consultations, Georgia decided to withdraw all its demands to the Russian Federation except one - the functioning of border and customs checkpoints operating in Georgian breakaway regions (BBC Monitoring, 2007). The Georgian side viewed this request as Russia's commitment undertaken by the bilateral agreement on Russia's accession to the WTO signed in May 2004. The delegations decided to meet again in the spring of 2007 (BBC Monitoring, 2007).

On May 31, 2007 Tamar Kovziridze and Maxim Medvedkov met again in Geneva; the agenda of bilateral talks included the Georgian concerns about checkpoints at the Abkhazian and South Ossetian sections of the Georgia-Russian state border. Most of the debate was about whether the border crossing issue was WTO-related. When Kovziridze asked why the Russian authorities allowed the

border checkpoints to operate without Tbilisi consent, Medvedkov replied with the counter question: "Did you ask us for permission to open a checkpoint at the new airport in Tbilisi?" (Wikileaks: Georgia, 2007). Kovziridze clarified that the airport is not located at the border of a foreign country, as are Gantiadi-Adler and Roki-Lower Zaramag checkpoints. The discussion did not reach any practical solution. It became clear that the Russian attitude in the negotiations with Georgia was at odds with the Kremlin's professed respect for Georgia's territorial integrity, but consistent with their support for the legitimacy of the de facto authorities in Sokhumi and Tskhinvali.

On April 28 2008, the Government of Georgia applied to the members of the WP announcing that it is temporarily suspending its bilateral talks with Russia until Moscow repeals the Presidential order issued of April 16, 2008, to "interact" with the de facto regimes in Abkhazia and South Ossetia, "including organizing cooperation in the trade, economic, social and techno-scientific fields". Tbilisi also contended that special new rules for South Ossetia and Abkhazia violate WTO obligations to treat all parts of Georgian customs territory equally. The same day Russia issued a statement by its delegation to the WTO working party that it does not consider it necessary to notify the new rules to the WTO and that the MFA's April 16 statement is sufficient for all purposes. It expressed its willingness to continue bilateral negotiations with the Georgian delegation. Deputy Minister of Foreign Affairs of Georgia Grigol Vashadze held meetings with US and EU Ambassadors asking support for its position in this matter. The WTO Secretariat has made it clear that Georgia is within its rights to insist on a resolution of the border crossing issue, and to withhold its assent to the accession process moving to the multilateral phase until that is accomplished.

The US and EU were closely watching Tbilisi's conduct during the Georgian-Russian talks. While EU was keeping neutrality and just wanted to be well informed over Georgia's intentions at the negotiations, the US was quite supportive, particularly for the Georgian position over the border crossing issue. As to US Ambassador John Tefft, the Georgia's concern regarding the Kremlin's 16 April, 2008 instructions, could seriously complicate the border crossing issue which merits serious consideration. He further concluded in his cable, that "a temporary halt to the bilateral negotiations would seem to be reasonable and justifiable in that light" (Wikileaks: Georgia, 2008).

The general deterioration in Russo-Georgian political relations started in spring 2008. In early August 2008 endless provocations from both sides around Tskhinvali district resulted in a Russian military intervention and a full-scale war between the two countries. It had catastrophic consequences for Georgia; Russia launched a war against Georgia aiming at: preventing Georgia's further westward integration, increasing Russia's control of the Caucasus region; retaliation for the expulsion of Russian military bases from Georgia, and for Western recognition of Kosovo's independence (Kavadze & Kavadze, 2015). As a result Russia occupied Abkhazia and South Ossetia, recognized independence of the two Georgian provinces, built-up two military bases and conducted the borderization of administrative borders between Georgia proper and the mentioned secessionist regions. Subsequently, the war had quite a negative impact on the Russia's accession to the TWO and particularly on Russian-Georgian talks: it had been frozen for two more years.

## Resumption of the Russian-Georgian Bilateral Talks

### *The "Surplace"*

By the end of 2010, as it was expected, Georgia became an "inhibiting factor" on the final way of Russia's WTO membership: bilateral negotiations have been completed with all partner countries, except Georgia; the WP work was put on hold because of Tbilisi's objections to the further WTO accession deliberations. Georgia was left face-to-face with Russia. Nonetheless, the Government of Georgia acknowledged that the Russia's accession to the WTO was a matter of significance for US, EU and other partner countries, therefore,

Russia was expecting Washington and Brussels to put pressure on Georgia aiming at taking "more constructive approach" at WTO talks. However, Tbilisi was insisting that there was no such pressure put on Georgia, since friends of Georgia and partners assumed that the Georgian demands are justified and its legitimate political demands could be realized through constructive talks with Russia. The Georgian leadership reportedly declared that Tbilisi will use veto right unless the Georgia's concerns are thoroughly discussed and resolved.

In 2011 Tbilisi offered the Russian Federation a new approach over resumption of bilateral negotiations on the latter's accession to the WTO. This diplomatic gesture was reciprocal: Moscow too was ready to be engaged in results oriented negotiations. Besides, Tbilisi had been receiving delicate reminders coming from Washington and Brussels that some win-win solution should be elaborated. Particularly, after Obama-Putin talks: "President Obama pledged to support Russia's efforts to complete remaining steps in multilateral negotiations so that Russia could join the WTO as soon as possible," the White House emphasized in a statement after a phone conversation between the Russian and US Presidents on October 1, 2010 (Reuters.com, 2010). According to Lawrence Summers, director of US President National Economic Council, Moscow recognized that "some sort of creative solution" needs to be applied to remove Georgia's objection to Russia's WTO membership. He said that Russia's bid to join WTO may be successfully completed within a year and Georgia's issue on the matter was thoroughly discussed during his recent talks with Russia's First Deputy Prime Minister, Igor Shuvalov (Civil.ge, 2010). On several occasions US made it clear that while supporting the early conclusion of Russia's WTO accession – but not at any price.

On 24 October 2010, as soon as the EU-Russia bilateral talks were completed, EU Trade Commissioner Karel De Gucht commented: *"We have struck a deal on the final outstanding bilateral issues, leaving the way open for Russia to join the WTO by the end of this year... There is now very little time left to reach a bilateral agreement between Georgia and Russia. I call on both parties to continue their efforts to find a solution in a spirit of compromise. The EU is ready to offer whatever help is necessary to resolve the issue"* (Delegation of European Union to Russia, 2011). It was already noticeable that the Georgia's "inflexible" position became an irritating factor for the EU Commission. Key WTO member-countries (US, EU, Canada, Japan, Australia, etc.) offered both Russia and Georgia to resolve disagreements till mid November 2011, thus all engaged parties were waiting for the outcomes of the Georgia-Russia talks.

In January 2011, the Russian government expressed its readiness to resume negotiations with Georgia and nominated Mr. Maxim Medvedkov, as chief negotiator. Tbilisi confirmed its devotion to negotiations and readiness to meet the Russian delegation under the Swiss mediation and formed a delegation led by Chief Advisor to the Prime-Minister, Ms. Tamar Kovziridze. The Georgian team was strengthened by deputy Minister of Foreign Affairs Mr. Sergi Kapanadze, who distinguished himself in the field of conflict resolution in Georgia. Since the countries did not have diplomatic relations the Swiss Foreign Office volunteered for facilitation of the dispute settlement and expressed readiness to mediate bilateral trade talks.

### *The "KK approach"*

In the meantime, the Georgian delegation elaborated a strategy, called the "Kovziridze-Kapanadze approach" ("KK approach") over resumption of bilateral negotiations with the Russian Federation. The "KK approach" contained a few concrete points which were considered by Tbilisi as a basis for future deliberations. The Georgian government wanted to set the tone of negotiations and announced through all available diplomatic and public channels that the Georgian delegation will raise only WTO compliant issues. Notwithstanding that, Georgia expressed readiness to seek a fair, reasonable and mutually acceptable solution, even pledged that the issue of embargo, Russia has imposed on Georgian export since 2006 on political grounds, which was undeniably in breach with WTO principles, will not be included into the agenda of negotiations.



Nonetheless, on 13 March, 2011 Russian Foreign Minister Sergey Lavrov stated that Russia may join WTO without Georgia's support: *"If our Georgian colleagues continue to keep sticking to their politicized position, then the issue of Russia's accession to WTO will, probably, have to be resolved differently, without their participation. There are legal means of doing that... Georgia should give the go-ahead to Russia's accession to the WTO... We are ready for such communication with Georgia and have already agreed with Swiss mediation to hold talks in Geneva only on the bases of the WTO related issues"* (Civil.ge, 2011).

It meant that Russia was ready, in case of the Georgian veto on Russia's accession, to request voting procedures to solve the issue. According to the WTO rules, if during decision making consensus cannot be achieved the matter shall be resolved by voting and that the agreed procedure does not preclude a member from requesting a vote. Russia hoped that Georgia will be outvoted at the General Council meeting, where the membership issues theoretically can be decided by the Ministerial Conference which approves the accession agreement by a two-thirds majority of the Members (Ehlermann, 2005). There were three considerations on this issue the Georgian delegation took into account: the membership issue cannot be included into the agenda of the WTO General Council session unless Russia completed all bilateral negotiations, including with Georgia; before the issue is taken to the General Council, WTO member states have to adopt the accession protocol with the Working Party report, usually by consensus; according to the WTO practice, the General Council has never taken a decision over membership with the majority of votes: decisions on membership have always been taken by consensus.

Tbilisi believed that the effectiveness of the decision-making process will be quite negatively affected if WTO abandons a consensus principle on such a key issue as accession of a new member. The WTO main players (US, EU, China, Japan, Canada, India, Brazil, Korea, etc.) usually are not in favour of such precedent either, because there is a risk that they can be outvoted by small economies on certain trade issues and, consequently, it was a very low probability of Russia's successful move on the matter (Kavadze, Ukleba, & Katamadze, 2003), (Ehlermann, 2005).

The functioning of the two illegal check-points at the Georgian-Russian state border again became the only topic of the negotiations. For Georgia the issue of main concern was the transparent and WTO-compliant functioning of the checkpoints in the post-conflict/occupation zones, which could be done through applying various international experiences and arrangements. The Georgian delegation elaborated 3 options of border control which could be discussed with the Russian team.

- **Option 1** (the best option): Deployment of Georgian customs officers at the mentioned check-points. The Georgian delegation well understood that it will be quite difficult technically to organize work of Georgian customs officers in the checkpoints located on the Russian of the state border. Besides, with great probability we could assume that the Abkhazian and South Ossetian de facto leadership would disapprove the proposal (the Russian delegation from the outset rejected the possibility of stationing of Georgian customs officers at the Russian checkpoints in Adler and Lower Zaramag);

- **Option 2** (preferable option): Using internationally accepted mechanism of border control in post-conflict zones similar to the EU BAM (EU Border Assistance Mission in Moldova); for Georgia it would be preferable arrangement of a border control under monitoring of international organizations and, in the first instance, using the EU border monitoring assistance practices;

- **Option 3** (can be discussed in the last instance): Inviting an independent private company for border monitoring (transit monitoring, cargo tracking, inspection services, transmitting cargo information etc.) under the Russian-Georgian border crossing special monitoring arrangement (this option was kindly suggested by the Swiss mediation).

In 2011 the Georgian and Russian delegations met in Bern and Zurich a number of times. After a few meetings, which ended with failure, in summer 2011 delegations took Option 3 as a basis for future deliberations and the work moved forward.

### *Conclusion of the Agreement: Costs and Benefits*

On 9 November 2011, in Geneva, under mediation of the Swiss diplomats, Georgia and Russia signed a package of documents: a bilateral agreement on the basic principles for a Mechanism of customs administration and monitoring of trade in goods, relevant Memorandum of Understanding affirming the role of Switzerland as the neutral third Party, then Georgia, Russia and Switzerland exchanged documents to define conditions and tasks for operation of a neutral private company, which will be accountable to the Swiss Government for monitoring purposes. The mentioned accords envisaged establishment of a mechanism of customs administration and monitoring of trade in goods consisting of an International Monitoring System (IMS) and an Electronic Data Exchange System (EDES).

Tbilisi and Moscow both claimed victory. This agreement was considered by the Georgian government as an important achievement which enables Georgia through independent international observance to monitor trade between Russia and the Georgian breakaway regions. The Saakashvili regime, which has already been shaken, needed some, even small victories, particularly for internal use, which could help the ruling party to show electorate about persistent work of the ruling elite on restoration of the territorial integrity of Georgia, and to gain a greater support from the population and thus to retain power. On 23 November, 2011 President Saakashvili, in his best PR making traditions and live TV show, awarded "the Order of Glory" Chief Advisor to the Prime Minister Ms. Tamar Kovziridze and Deputy Foreign Minister Mr. Sergi Kapanadze for "professionalism and fruitful diplomacy during long and exhausting negotiations on Russia's accession to the WTO". The President called these achievements as "historic," gaining "one of the greatest" diplomatic victories for two decades of Georgia's independence; and "for the first time international monitoring of the movement of goods will begin within the internationally recognized borders of Georgia." (Tabula.ge, 2012), (Gurgenidze, 2011).

The Kremlin scored victory as well and was celebrating the serious gains: firstly, Russia at last received a WTO membership ticket, secondly, the Agreement did not change the status quo in the region, and thirdly no serious concessions were made to Tbilisi over the status of the secessionist regions and finally, the two customs checkpoints have actually been legalized. After victorious statements made in Tbilisi the Russian Foreign Ministry disclosed the essence of the Agreement and decided "to inform the international community" about the actual content of the documents signed in Geneva (Ministry of Foreign Affairs of the Russian Federation, 2011). According to the Russian Foreign Ministry:

- The Agreement applies to three trade corridors: three Russian and three Georgian customs terminals/points which are located in specific areas. Particularly, in case of Russia: Adler (near the border with Abkhazia), the village of Lower Zaramag (near the border with South Ossetia) and the village of Upper Lars (at the Kazbegi district, Georgia). The Georgian customs terminals were sited on the left bank of the Inguri River (Georgian administrative border with Abkhazia), in the area north of Gori (bordering with South Ossetia) and in district of Kazbegi (Russian border).

- This is not only the mutual trade between Russia and Georgia, but also goods exchanges between each of these two countries and Abkhazia and South Ossetia (for example, goods from Sokhumi on their way to Russia, or goods from Tskhinvali region heading to Tbilisi through the Gori area).

- The task of verifying the accuracy of summary statistics forwarded by Russia and Georgia to the WTO will be entrusted to an

independent private company.

- The trade information that the company obtains within the framework of the work under contract with each of the two governments are to be treated as strictly confidential and are not intended for transfer to the other Party to the Agreement.

- The measures of customs administration and monitoring provided by the Agreement apply only to both Russia and Georgia. This has important political implications. Thus, according to the Agreement, customs terminals are set up in the trade corridors leading from Georgia to Abkhazia and South Ossetia, with customs procedures applicable to commercial goods passing through them. Clearly, all these are important attributes of the status of Abkhazia and South Ossetia as autonomous customs areas and of the status of Georgia's border with them as a customs boundary.

If we compare the two available different views over the signed agreement we will conclude that the truth should lie somewhere in the middle. However the trickiest issue for Georgia was the so called "three trade corridors", particularly the two ones passing Abkhazia and South Ossetia, which represent for Georgia the weakest point. By the way, from the outset it became clear that establishment of monitoring on the Kazbegi-Upper Lars undisputed section of the state border was absolutely useless exercise, because both Russia and Georgia at this section have well developed infrastructure for border control with relevant customs facilities. As to other two corridors, for Georgia proper, customs terminals are set at the administrative border of Georgia on the left bank of the Inguri River and North of Gori district or at the administrative borders of Georgia with Abkhazia and South Ossetia. Russia will report its trade with Abkhazia, South Ossetia and Georgia proper separately as international trade and forward trade turnover statistics to the WTO's Integrated Data Base on a monthly basis (Civil.ge, 2011).

In case of Georgia (here we exclude Kazbegi-Upper Lars direction), the trade corridor means streams of goods passing the occupied territories with both directions. However, there is no significant inflow and outflow of products and services between Georgia proper, on the one hand, and Abkhazia and South Ossetia, on the other, and there was no necessity for fixing "customs terminals" at the Georgian administrative borders. On top of that Georgia undertook the commitment to pay to international monitors for their services on the territory controlled by the central authorities and by all means it was routine duties of customs services to check inflow and outflow of commercial cargoes. Since early days of commencement of the bilateral negotiations (September 2000), Georgia's primary goal was to seek for control on the two checkpoints – Gantiadi-Adler and Roki-Lower Zaramag at the outer Georgian borders (as it is described above). As a result of the signed accords, apart from these two border crossing points Georgia received an international control on its inner administrative borders which actually gave a pretext to the Kremlin to claim victory over "recognition of two Georgian provinces as independent customs territories" (Ministry of Foreign Affairs of the Russian Federation, 2011).

Notwithstanding that, the agreement does not envisage control on marine shipments of commercial cargoes in case of Abkhazia. It is well known that both Russia and Turkey trade with Abkhazia by merchant fleet and shipments to the port Sokhumi and Georgian maritime borders at the Abkhazian section are controlled by Russian border guards. Russia can use this route for any shipment bypassing the installed international monitoring system.

Furthermore, the agreement refers to flow of only trade/commercial goods, which means that military supplies are not applicable for international monitors. The putting into operation of the Russian checkpoints at the Abkhazian and South Ossetian sections of the Georgian state border in early 90s was explained by necessity of military deliveries destined for Russian military units stationed in the mentioned Georgian provinces. For the Georgian central authorities it was always a real threat and a great puzzle over Russian military inland shipments coming into Abkhazia and South Ossetia. Actually the 9 November 2011 Agreement gave a free hand to Rus-

sia to supply the military bases and secessionist regimes with any type of military equipment they want to deploy on the ground with no control from the international monitoring system. In our point of view, everything above-mentioned causes misgivings about necessity and usefulness of the Agreement and the above-mentioned arrangement can be assessed as a serious weakness of the Saakashvili diplomacy.

The implementation of the agreement became yet another sticking point for the trade monitoring issue: quite a few technical problems arose from early days when the Swiss inspection company SGS (*Société Générale de Surveillance*) was selected in 2012 to monitor the movement of goods on the mentioned three trade corridors. As it was envisaged by the agreement, the separate Georgia-SGS and Russia-SGS contracts have to be concluded, parties should set up a steering Joint Committee composed of representatives of each party and arrange deployment of SGS personnel at the entry/exit locations of the corridors within the established grid points (Civil.ge, 2015). For Russia it was quite easy to arrange monitoring at its already established and operating border and customs checkpoints. In case of Georgia it became an Achilles' heel to set up customs terminals at the administrative border with breakaway regions with no relevant infrastructure and under permanent pressure and provocations from the Russian border guards expanding administrative borders and installing barbed wire fences along the occupation line (Civil.ge, 2015).

As a result, the implementation of the agreement was delayed several times. In June 2014 the draft contract with SGS submitted by the Georgian government had become already outdated: during his visit to Georgia Swiss President and Foreign Minister Mr. Didier Burkhalter admitted that "we are still discussing this document; it should be noted that it is quite a problematic issue, may be ... some changes have to be introduced into the contract with SGS" (Kirtzhkhalia, 2014). The Georgian government tasked the Ministry of Finance to oversee the implementation of the project. Overall situation was on standstill and the first term (a three-year term) of the Agreement expired in August 2015 with no progress and renewed for the next three-year term.

As we can see, no significant practical gains received Georgia since entering into force of the Agreement (the date of the accession of Russia to the WTO – 22 August 2012). For the "Georgian Dream Coalition" led by billionaire Bidzina Ivanishvili, who won the parliamentary election in October 2012, implementation of the 9 November Agreement (2011) concluded by the Saakashvili regime was not politically beneficial and they did not show any signs of enthusiasm in accelerating of the enforcement process. It became clear that Russia too did not rush for commencement of international monitoring because it was not in Moscow's interests setting up any type of inspection of cargo flows with Abkhazia and South Ossetia. As it seems to us, prospects for international monitoring of trade between Georgia and Russia for the foreseeable future are quite vague.

## Conclusion

Since September 2000, when Georgia formally joined Russia's WTO accession deliberations, both Russia and Georgia travelled a long and uneasy road: start-stop trade negotiations became a victim to political disputes existing between the two countries, which had lasted for 11 years. Both Tbilisi and Moscow were primarily led by political and security considerations and negotiating teams in Geneva translated national foreign policy priorities into the WTO language. Nevertheless, Georgia did not need to reinvent a wheel: Russia was already violating basic principles of international trade and was giving a good reason to the Georgian delegation to raise some critical issues at the WTO accession talks, certainly to Russia's great displeasure. Furthermore, for Georgia these diplomatic negotiations served the purpose of foreign policy objectives: if the Georgian government succeeded in the talks, it would be used as bargaining chips in future Georgia-Russia negotiations on a broader bilateral agenda. Initially Moscow was simply ignoring the Georgian concerns and was rejecting the legitimacy of questions posed by the Georgian delegation at the WTO accession talks; at a later stage it was just reluctant to be engaged in the process of consideration of those significant points, finally, during last negotiations round the Russian Federation has demonstrated a some signs of goodwill for finding out the ways of mutually agreeable solution of those problems.

Georgia, as a small and vulnerable country, had a little leverage in market access negotiations – possibilities for significant gains were very small. Relations between Tbilisi and Moscow were additionally burdened with quite confronting and sometimes hostile environment: the Russian-Georgian relations since Georgia's independence were very tense and complex, overshadowed by Russia's support of aggressive separatism which resulted in a loss of control over Georgian provinces of Abkhazia and South Ossetia. Regular pressure exerted on Georgia, manipulation with supply of energy resources, trade restrictions and import bans, interference in the domestic political affairs and lastly Russia's resurgent imperial ambitions for keeping Georgia within sphere of its influence represented a real threat to the national interests of Georgia. Despite all odds, in these circumstances, Russia's WTO accession talks were a promising playground for Georgia: if Tbilisi together with other partner countries could manage to disclose Russia's WTO inconsistencies, violation of undertaken international commitments, introduction of discriminative and unjustified measures against trade partners, Russia would be transformed into a more accountable to international norms and a reliable partner.

Moscow at the Geneva talks had a simple plan: as a primary task, the Kremlin wanted to complete bilateral negotiations with the main trade actors, finalize multilateral talks and then jointly with other WP members to raise pressure on tiny Georgia for getting a WTO membership ticket. On the other hand, Russia wanted to remove the "Georgian awkward factor" from the WP deliberations: the Georgian statements, uncomfortable questions and exerting permanent pressure over the whole range of trade related issues often baffled the Russian delegation.

In 2003 Russian tactics over negotiations with Georgia was changed towards seeking new ways of solving problems and actually this shift was considered as a positive sign. The border checkpoints and visa issues were of particular concern and quite sensitive for the Georgian government: if earlier Russia tried to convince WTO member countries that Georgian problems were outside of the WTO scope, in 2003 Russia implied that one of the ways to solve problems would be a commitment undertaken by Russia to legalize illegal customs checkpoints as well as abolish the discriminative visa regime upon accession.

After the November 2003 Rose Revolution and peaceful transfer of power in Georgia bilateral relations received a new impetus and positive dynamics. In March 2004 Putin-Saakashvili summit held in Moscow gave very promising outcomes. In May Georgia and Russia signed a bilateral market access agreement: Russia granted Georgia requested INRs; besides the separate protocol

was signed where Russia pledged to eliminate all inconsistencies in the field of customs regulation and administration, and to bring its trade policies and practices into conformity with WTO principles and norms. Moscow was very pleased with the fresh start from the "clean slate" and played significant role in peaceful departure from power of Adjarian secessionist warlord Aslan Abashidze.

The August 2004 brief war at the Tskhinvali district was a turning point in Russian policy towards Georgia. The sequence of events showed that the Georgia-Russia honeymoon was over and the countries were dragged into the "cold war" stage. According to the Kremlin's calculations security of Russia's South flank was entirely dependent on the situation in South Caucasus and particularly Georgia. Actually for Moscow low politics became a supplement for high politics.

In 2004-2006 political environment for the Russian-Georgian WTO talks became even more adverse. For Georgia it was not easy to stand firm to Moscow's sabre-rattling; in the following years the Kremlin was able to exert considerable pressure over Georgia on all directions. Gas delivery manipulation, regular violation of the Georgian airspace, provocative actions of the Russian peacekeepers became a daily routine for the Georgian-Russian relations. In February 2006 Russia stopped issuing visas for Georgian nationals, in March banned import of Georgian wine and wine products and then distilled alcoholic beverages.

The general deterioration in Russian-Georgian political relations started in spring 2008. In early August 2008 endless provocations from both sides around Tskhinvali district culminated in a Russian military intervention and a full-scale war between the two countries which ended with catastrophic consequences for Georgia: Russia occupied Abkhazia and South Ossetia, recognized independence of the two Georgian provinces, signed strategic partnership and free trade agreements with de facto regimes, built-up two military bases and conducted the "borderization" of administrative borders between Georgia proper and the mentioned secessionist regions. Subsequently, the war had quite a negative impact on the Russia's accession to the WTO and particularly on Russian-Georgian talks: it had been frozen for two more years.

By the end of 2010 Georgia became an "inhibiting factor" on the final way of Russia's WTO membership. The Government of Georgia acknowledged that the Russia's accession to the WTO was a matter of significance for US and EU. In January 2011 Tbilisi put forward a new approach over resumption of bilateral negotiations. This diplomatic gesture was a result of delicate reminder coming from Western capitals that some win-win solution should be elaborated. After a few rounds of negotiations held in Switzerland the parties decided to focus on international monitoring of the contested borders.

On 9 November 2011, in Geneva, under mediation of the Swiss diplomats, Georgia and Russia signed a package of documents: a bilateral agreement on the basic principles for a mechanism of customs administration and monitoring of trade in goods, relevant Memorandum of Understanding affirming the role of Switzerland as a mediator, as well as documents to define conditions and tasks for operation of a neutral private company.

Tbilisi and Moscow both claimed victory. This agreement was considered by the Georgian government as an important diplomatic achievement which enables Georgia through independent international observance to monitor trade between Russia and the Georgian breakaway regions, which was followed by the noisy PR campaign orchestrated by Saakashvili. The Kremlin scored victory as well and was celebrating the serious gains: firstly, at last Russia has got the green light for WTO membership, secondly, the Agreement did not change the status quo in the region, thirdly no serious concessions were made to Tbilisi over the status of the secessionist regions and, lastly, all Russian border crossings with Georgia were legitimized.

If we compare the two available different views over the signed



agreement we can conclude that this is a type of win-win outcome or the truth should lie somewhere in the middle. However the trickiest issue for Georgia was the so called “three trade corridors”, which meant streams of goods passing with both directions, particularly the two ones, passing Abkhazia and South Ossetia, undoubtedly representing for Georgia the weakest point.

From the outset it became clear that establishment of monitoring on the Kazbegi-Upper Lars undisputed section of the state border was a useless exercise, because both Russia and Georgia have well developed infrastructure for border control with relevant customs facilities and never complained about lack of control and trade information at this frontier section. As to other two corridors, inspection facilities are to be set in Zugdidi and Gori regions and there was no necessity for fixing “customs terminals” at the Georgian administrative borders with absence of inflow and outflow of goods and services between Georgia proper, on the one hand, and Abkhazia and South Ossetia, on the other. On top of that Georgia undertook the commitment to pay to international monitors for their services on the Georgian territory.

Since early days of commencement of the bilateral negotiations, Georgia's primary goal was to seek for control on the two border checkpoints – Gantiadi-Adler and Roki-Lower Zaramag – at the outer Georgian borders. However, as it is stipulated in the Agreement, apart from these two border crossing points Georgia received an international control on its inner administrative borders which actually gave a pretext to the Kremlin to claim victory over “recognition of two Georgian provinces as independent customs territories”. Notwithstanding that, the agreement does not envisage control on marine shipments in case of Abkhazia and refers to flow of only commercial goods, which means that military supplies are not applicable for international monitors.

A victorious mood of the Georgian leadership over “great diplomatic achievements” had certainly been exaggerated. Conclusion of the agreement for Saakashvili had more face-saving outcome than breaking negotiations deadlock and the Georgian interests serving effect. Undoubtedly, some monitoring system over Russian checkpoints at the Abkhazian and South Ossetian sections of the Georgian state border can be established, but this is a very shaky arrangement and Russia will always try to avoid any monitoring of trade with occupied territories; especially, the existing “black holes” outside these corridors provide a good opportunity for avoidance of the international customs control. In our point of view, everything the above-mentioned causes misgivings about necessity of the Agreement and the overall outcome of the negotiations can be assessed as a weakness of the Saakashvili diplomacy.

The implementation of the agreement became yet another sticking point for the trade monitoring issue: quite a few technical problems arose from early days when the Swiss inspection company SGS was selected to monitor the movement of goods in the mentioned three trade corridors. For Russia it was quite easy to arrange monitoring at its already established and operating border crossings. In case of Georgia it became quite awkward to set up customs terminals at the administrative borders with breakaway regions with no relevant infrastructure and under permanent pressure and provocations from the Russian border guards expanding administrative borders and installing barbed wire fences along the occupation line. As a result, the implementation of the agreement was delayed several times. Overall situation was on standstill and the first term (a three-year term) of the Agreement expired in August 2015 with no significant progress in that direction.

To sum up we can conclude that no significant practical gains Georgia has received since entering into force of the Agreement (22 August 2012). For Georgia outcome of long negotiations is quite vague, implementation of the Agreement is politically very sensitive and technically complex. In this connection a legitimate question has arisen: was the game worth the candle? For the “Georgian Dream Coalition” led by Bidzina Ivanishvili, who won the parliamentary election in October 2012, implementation of the Agreement concluded by the Saakashvili regime was not politically

beneficial (as many other Saakashvili's “feats”) and they did not show any signs of enthusiasm in catalyzing of the enforcement process. Furthermore, all information about “progress” of implementation of the Agreement and SGS activities both in Georgia and in Russia is kept under the veil of secrecy, giving food for thought for further speculations. It became clear that Russia did not rush either for commencement of the international monitoring because it was not in Moscow's interests setting up any type of inspection of cargo flows with Abkhazia and South Ossetia. We can assume that prospects for efficient international monitoring of trade between Georgia and Russia across the secessionist regions are quite bleak for the foreseeable future and much of the Agreement may turn out to be redundant.

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